

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER ZOMERFELD, :  
 :  
 Plaintiff : CIVIL ACTION NO. 3:22-971  
 :  
 v. : (JUDGE MANNION)  
 :  
 COURTDALÉ BORO, *et al.*, :  
 :  
 Defendants :

**ORDER**

Pending before the court is the report of Magistrate Judge Joseph F. Saporito, Jr., which recommends that the defendants' motion to dismiss be granted and the plaintiff's complaint be dismissed, with prejudice, for failure to state a claim upon which relief can be granted. (Doc. 21). Neither party has filed objections to the report and recommendation.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)).

Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Generally, the plaintiff's complaint alleges that his constitutional rights were violated when he was cited on a number of occasions by local police for holding an extended yard sale at his mother's home in Courtdale. (Doc. 1). The plaintiff has brought this action against several defendants. Initially, in addition to the Borough of Courtdale, the plaintiff names the Borough council and the Borough police department as defendants. Judge Saporito recommends these defendants be dismissed as redundant of the plaintiff's parallel claims against the Borough itself.

As for the Borough of Courtdale, Judge Saporito recommends that the plaintiff's claims be dismissed for failure to state a claim because the plaintiff does not identify any policy or custom adopted or promulgated by the Borough of Courtdale as required by *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

The plaintiff also names Carl Hodroski, the Council President as a defendant. As to Mr. Hodroski, Judge Saporito recommends that he be dismissed for the plaintiff's failure to allege any conduct on his part in an

alleged violation of his constitutional rights. Instead, the complaint appears to assert a *respondeat superior* claim against Mr. Hodroski.

Next, the plaintiff names John Pieszala, the Police Chief for the Borough of Courtdale, who issued the plaintiff the citations. Judge Saporito liberally construed the claims against Chief Pieszala as Fourteenth Amendment due process and equal protection claims. Analyzing each, Judge Saporito recommends that the claims be dismissed for failure to state a claim upon which relief can be granted.

Finally, because the plaintiff failed to file any response to the defendants' motion to dismiss and because any attempt by the plaintiff to amend his allegations would be futile, Judge Saporito recommends that dismissal be without leave to amend.

Upon review of the record, including the plaintiff's complaint, the defendants' motion to dismiss, and Judge Saporito's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Saporito to his conclusions. As such, the court will adopt the report and recommendation in its entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

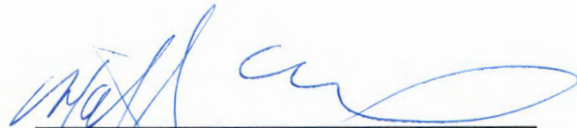
**(1)** The report and recommendation of Judge Saporito (**Doc. 21**)

is **ADOPTED IN ITS ENTIRETY** as the decision of the court.

**(2)** The defendants' motion to dismiss (**Doc. 13**) is **GRANTED**.

**(3)** The plaintiff's complaint (**Doc. 1**) is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted.

**(4)** The Clerk of Court is directed to **CLOSE THIS CASE**.



**MALACHY E. MANNION**

**United States District Judge**

**DATE: March 6, 2023**

22-971-01